IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1786 OF 2004

DECIDED ON : 6th December,2004

FOR APPROVAL AND SIGNATURE

THE HON'BLE SMT. JUSTICE RANJANA DESAI

THE HON'BLE SHRI JUSTICE ABHAY S. OKA.

1. Whether Reporters of Local papers may be allowed to see the Judgment ?

2. To be referred to the Reports or not ?

3. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder ?

4. Whether it is to be circulated to the Civil Judges ?

5. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices ?

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Office notes,office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri U.N.Tripathi, Advocate for Petitioner.

Shri I.S.Thakur, A.P.P. for Respondent

CORAM : SMT.RANJANA DESAI,&
ABHAY S.OKA,JJ.

Dated :6th December,2004.

P.C. :

For the reasons separately recorded in the

Judgment, the following is the operative part of the order:

"The Appeal is dismissed."

(SMT.RANJANA DESAI, J.)

(ABHAY S.OKA,J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1786 OF 2004

Shri Sunil Gajanan Shelar ....Petitioner

V/s

1) Shri S.Chakrawarthy
The Commissioner of Police, Thane
2) The State of Maharashtra
3) The Superintendant,
Nashik Road,Central Prison, Nasik. ...Respondents.

CORAM: SMT.RANJANA DESAI,&
ABHAY S.OKA,JJ.

Dated 6th December,2004

JUDGEMENT (Per Abhay S.Oka,J.)

1) By this petition under Article 226 of the Constitution of India, the Petitioner has challenged the order of detention dated 25th March,2004 passed by Respondent no.1 under the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-offenders and Dangerous Persons Act 1981 (Mah.Act No.LV of 1981) (hereinafter referred to as the State Act,1981). The said order has been passed against one Rahul Vasudeo Shelar with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The Petitioner is the uncle of the detenue.

2) The Order of Detention is based on one C.R. registered against the detenu and three in-camera statements. It is alleged that on 9th October,2003 at about 10.00 a.m. an Associate of the detenu threatened one Tulshiram Malviya, an owner of a grocery shop at the point of knife and demanded Rs.5000/- from him. On that day, he extorted a sum of Rs.500/- from the said Tulshiram. When Tulshiram refused to pay the amount of Rs.5000/-, he threatened Tulshiram. A complaint made by the said Shri Tulsiram was registered vide C.R. No.I/184/2003 u/s 384 r/w section 34 of the Indian Penal Code.

3) On 4th December,2003, the said Shri Tulshiram opened the shop in the morning at about 6.00 a.m. and was present in the shop. His brother Omprakash and nephew Sandeep were also present in the shop. At about 9.00 a.m. the detenu alongwith his associate Sanjay Sarfare armed with choppers entered the shop. At that time, 4 to 5 customers were present in the shop to purchase groceries. In presence of the customers, the said Sanjay Sarfare put the chopper at the neck of Tulsiram and the detenu put the chopper on his stomach. The associate Sanjay Sarfare threatened the said Tulsiram at the point of weapon by telling him to pay Rs.40,000/- on account of complaint made by him to the police and on the failure to pay the said

amount, he threatened to kill Tulsiram. Noticing the incident and out of fear, the customers ran away. The Pedestrians, Rickshaw Drivers nearby the place of incident also noticed the incident and they also ran away from the place. Thus public order was disturbed. The said Tulsiram could not shout for help and by mustering some courage he urged detenu to release him by assuring him that he will pay the amount as and when it was possible for him to pay. The detenu's associate Sanjay Sarfare opened the cash counter of the shop and removed Rs.500/- from the counter. Thereafter he took search of Tulsiram, his brother and nephew and removed sum of Rs.250/- from the shirt pocket of Tulsiram. The detenu and the said Sanjay Sarphare left the shop by threatening Tulsiram not to file a complaint with the police. Before leaving the shop, the said Sanjay Sarfare took two jars from the shop and threw them on the ground and broke them. While leaving, the detenu and said Sanjay brandishing weapons in their hands warned the said Tulsiram to remember the incident and to keep the amount ready on next day at 9.00 O'clock. The said Tulsiram got frightened and came to Manpada Police station. A complaint was recorded vide C.R. No.I 220/2003 u/s 384, 394, 452 r/w section 34 of the Indian Penal Code against detenu and the said Sanjay Sarfare. Both of them were arrested in connection with the said

criminal case. While in custody, chopper used by the detenu was recovered from him. By order dated 17th January,2004, the detenu was released on bail.

4) An anonymous application send by the residents of Rohidas Nagar, Dombivli (E) addressed to the Commissioner of Police, Thane was received by senior Inspector of Police of Manpada Police Station. In the said anonymous complaint it was stated that the detenu along with his 15 to 20 associates viz Raju and Sanjay Sarfare and others have created a reign of terror in the area. It was stated that detenu and his associates by threatening the residents and shopkeepers extort money from them. It was stated that those who were not complying with demand of money are being assaulted. After the said application was received, the police Sub-Inspector Shri Gaikwad of Manpada Police Station made enquiry and found that the allegations were correct. He found that detenu along with his 5-6 associates enter in the locality armed with deadly weapons such as swords, choppers, revolvers etc. and extort money and take valuables from residents and shop-keepers forcibly. Due to terror created by them, no one was coming forward to lodge the complaint against the detenu and others.

5) The said P.S.I. Gaikwad took some persons in the locality in

confidence and assured them that their identity would be kept secret. On the basis of the said assurance, in-camera Statements of three witnesses were recorded. The said Statements are verified by Divisional Assistant Commissioner of Police.

6) Witness 'A' stated that he is a resident of Dombivali and is running hotel in the locality in question. He stated that the detenu is known as Gunda in the said locality having no ostensible means of livelihood. He stated that detenu alongwith his 5-6 associates always move in the area. He stated that Sanjay Sarfare and Raju Sarfare are two associates of the detenu. He stated that the detenu and associates always move in the locality with deadly weapons such as Knife, Chopper and Gupti and extort money. He stated that those who refuse to bow to the demand are assaulted. He stated that on a Sunday, at about 1.30 p.m., the detenu alongwith associates entered his hotel. Detenu's associate Sanjay Sarfare came to the cash counter and called upon the witness to pay some amount. Sanjay Sarfare put his hand in the cash counter of the hotel to which the witness objected. The said Sanjay Sarfare whipped out the knife and put the same on the chest of the witness. The said Sanjay Sarfare removed cash of Rs.2500/- and cell phone from the shirt pocket of the witness forcibly. When the employees of the hotel tried to

help the witness, the said Sanjay Sarfare threatened them at the point of knife that they would be killed. The detenu and his associates told witness 'A' that if any complaint was filed to the police, they would kill him.

7) Witness 'B' whose– in-camera statement is recorded is a resident of Sudarshan Nagar, Dombivali. He also runs a hotel. He also described the detenu as 'Gunda' and he also described acts of extortion by the detenu and his associates by threatening persons by use of deadly weapons like knife, Gupti, Chopper, Revolver etc. The witness stated that on a Monday at about 11.30 in the night, the detenu alongwith his associates entered his hotel and demanded food and liquor . When the said witness told them that the business was closed, the detenu and assistant Sanjay Sarphare took out a chopper and put the same at the neck of the witness. The employees of the witness who wanted to help could not help the witness as detenu and his associates prevented them from helping the witness. The detenu and his associates removed gold chain from the neck of the witness and cash of Rs.8000-10000/- was forcibly taken from the cash counter of the hotel. Customers who were present in the hotel ran away due to terror. The detenu and his associates threatened the witness of dire consequences if a complaint was made to the police.

8) Witness 'C' is resident of village 'Ajade' Dombivali(E) and is running a business. He also described prejudicial activities of the detenu and his associates. He stated that at about 10.30 in the night of a Saturday he loaded material of his business in a tempo and was returning to his residence. He was sitting in the driver's cabin along with driver. When the tempo was on its way, the detenu and his associates Sanjay Sarfare and Raju Sarfare came in front of the Tempo due to which driver had to stop the vehicle. The detenu and associates accosted the witness and threatened him by saying he had not paid amount for that month and all of sudden they hauled up the witness and his driver from driver's cabin and assaulted them with fists and kicks. They also took out choppers and threatened the witness on the point of said weapons . They removed 'RADO' wrist watch and cash of Rs.2000/- from the person of the witness. Nearby vendors and the driver ran away from the place due to terror and therefore they did not help the witness. The detenu and his associates warned the witness not to file the complaint to the police.

9) At about 6.55 in the evening of 13th January,2004 when P.S.I.Gaikwad alongwith staff members were deployed for Anti-robbery patrolling duty, the detenu saw them and started running. The police on suspicion chased and apprehended the detenu. When personal search of the

detenu was taken in the presence of pancha witnesses, a sword was found in possession of the detenu. Therefore an offence was registered against the detenu vide C.R.No.II/01/2004 u/s 25 (1)(c) of Indian Arms Act r/w section 37 (1) and section 135 of the Bombay Police Act, 1951. The detenu was arrested in connection with the said case and was released on bail on 6th February 2004. On the basis of the aforesaid instances, impugned order of detention was passed against the petitioner.

10) Learned Counsel appearing for the petitioner Shri Tripathi submitted that there was a gross delay in issuing order of detention. He submitted that the C.R. registered against detenu is of 4th December,2003 and in camera statements which are relied upon and which are recorded in January,2004 pertain to the instances which had taken place two months earlier. He, therefore, submits that order of detention which was passed on 25th March,2004 is vitiated by delay. He submitted that delay was not explained and as a result of unexplained delay, the live link between prejudicial activities of the detenu and the order of detention has been snapped. He submitted that even assuming that the allegations made against the petitioner are true, the same do not disturb public order. He lastly submit that offence registered against the detenu under the Arms Act is not

sufficient to hold that the detenu was a dangerous person. He submitted that if the said case registered under the Arms Act is ignored, the order of detention could not be based only on C.R.No.220 of 2003 which is a solitary incident. He submitted that no offence has been registered on the basis of in-camera statement of the three witness and therefore the instances alleged in in-camera statements cannot be termed as offences. He, therefore, submitted that the order of detention is vitiated. The Learned A.P.P. has relied upon the Affidavit in reply of the detaining authority and has contended that there is no delay in issuing order of detention. He submitted that even assuming that there was some delay, the same has been properly explained by the Detaining Authority. He has also pointed out that Public Order is disturbed by the prejudicial activities of the detenu. He has relied upon Judgement of this Court in Criminal Writ Petition No.1629/04 (Sachin Nikam v/s A.N.Roy & Others) dated 6th December,2004 for dealing with the last submission of Shri Tripathi.

11) Before considering the rival submissions, it is necessary to refer to the Affidavit in reply of the detaining authority. In paragraph no.10 of the Affidavit in reply, it is pointed out that the detenu was apprehended on the spot in connection with the C.R.No.1/2004 on 13th January,2004. Subsequently he was under arrest in connection with C.R.No.220/03 when

the weapon was discovered at his instance. After an anonymous application was received by P.S.I. of Manpada Police Station, enquiry was started and only after an assurance was given to the witnesses to keep their identity secret, three witnesses came forward and their in-camera statements were recorded on 14th December,2003 and 16th December,2003. The said in-camera statements were verified by the Assistant Commissioner of Police on 25th December,2003. The detenu was released on bail on 6th February,2004 in C.R.No.1/2004. After collecting necessary papers, the Sponsoring authority forwarded the proposal for detention through proper channel on 20th February,2004. The Divisional A.C.P. gave his endorsement on the said proposal on the same day. The Zonal D.C.P. gave his endorsement on 24 February,2004. The proposal was received by the detaining authority on 27th February,2004. After scrutinizing the proposal, supplementary report was called for from the Sponsoring authority alongwith relevant documents. The report and documents were received on 5th March,2004. The said documents were examined by Additional Commissioner of Police (Crime) on 6th March,2004 and after making endorsement, the papers were forwarded to the detaining authority. On 8th March,2004 the detaining authority formulated draft grounds and after the same were typed, on 14th March,2004 the same

were forwarded to A.C.P. After endorsement, the papers were forwarded to Additional Commissioner of Crime who gave endorsement on 19th March,2004. The detaining authority again examined the papers on 23rd March,2004 forwarded the papers for fair typing and translations. The documents were received by the detaining authority on 25th March,2004 and on the same day order of detention was issued. Considering averments made in paragraph no.10 of the Affidavit of the detaining authority, we are of the view that the alleged delay has been satisfactorily explained by the detaining authority. Considering the propensity and potentiality of the detenu to indulge in prejudicial activities it is not possible to accept the submission that the alleged delay has resulted in snapping the live link between the prejudicial activities and the order of detention. Therefore submission of the Learned Counsel for Petitioner can not be accepted.

12) As far as second submission is concerned the instances mentioned in the C.R. registered against the Petitioner and in the in-camera statements show that in the concerned busy localities at Dombivali the detenu and associates move with deadly weapons and extort money from the businessmen. As a result on terror, the customers of the witnesses 'A', 'B' and 'C' had to run away. If the nature of the prejudicial activities of the

detenu is examined, it appears that said activities affect the even tempo of life of the persons staying in the locality. We cannot find fault with the subjective situation recorded by detaining authority that the prejudicial activities of the detenu affect the public order.

13) As far as last contention is concerned, it is to be noted here that the some contention was raised before us in the case of Sachin (Supra). We have rejected similar submission that merely because no offences are registered on the basis of in-camera statements, the incidents narrated in the statements are not offences. We have held that merely because no offence is registered on the basis of the in-camera statement, the incidents mentioned therein do not cease to be offences. Therefore there is no merit in the last submission of the Learned Counsel for the petitioner.

We find that the petition is devoid of any merit and the same is dismissed.

(SMT.RANJANA DESAI, J.)

(ABHAY S.OKA, J.)